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9 **UNITED STATES DISTRICT COURT**
10 **WESTERN DISTRICT OF WASHINGTON**
11 **AT SEATTLE**

12 STATE OF WASHINGTON,

13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 HEALTH AND HUMAN SERVICES;
ALEX M. AZAR, in his official capacity as
the Secretary of the United States
Department of Health and Human Services,

17 Defendants.
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NO. 2:20-cv-01105

DECLARATION OF
KENNETH SHULMAN

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SHULMAN

ATTORNEY GENERAL OF WASHINGTON
Civil Rights Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7744

DECLARATION OF KENNETH SHULMAN

Pursuant to 28 U.S.C. §1746(2), I, KENNETH SHULMAN, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct:

1. I am over the age of 18 and competent to testify in this matter.

2. I am currently the Executive Director of Lambert House and have been in this position for 16 years. I have been an advocate for and public policy advisor regarding the systemic inequality for LGBTQ people in Washington for decades. I was appointed by Seattle Mayor Norm Rice to develop public policy on LGBT issues and asked by Seattle Mayor Paul Schell to accept a second appointment. While serving six years as a City Commissioner, I authored or co-authored twelve City budget allocations for innovative community-based programs addressing health disparities among LGBT youth and adults. The funding allocations included: a lesbian health clinic, cultural competency training for medical doctors treating LGBT seniors, a health-department vaccine campaign to stem an outbreak of hepatitis A & B among young gay men, and suicide prevention measures for LGBT students in the Seattle Schools, among others. I was twice confirmed by the Seattle City Council to serve on the Commission representing LGBT communities, where I worked extensively on three groundbreaking LGBT Civil Rights ordinances.

3. As a leader on LGBTQ equality, public policy, and programming, in 2018 and 2019 I was invited by the U.S. State Department to share the work we do at Lambert House with leaders of non-governmental organizations and governmental officials from more than 30 countries.

4. I received my Masters in Public Administration from Harvard University.

5. I am submitting this Declaration in support of Plaintiff Washington's Complaint and Motion for Preliminary Injunction to stop the Department of Health and Human Services rule, entitled "Nondiscrimination in Health and Health Education Programs

1 or Activities, Delegation of Authority,” 85 Fed. Reg. 37160-248 (the “Final Rule”), from
2 taking effect.

3 6. Lambert House has been supporting LGBTQ Youth in Washington for 39
4 years and was the first independent, self-sustaining LGBTQ youth organization in the country
5 to receive IRS tax-exempt designation in 1981. It was founded by Pediatrician and Professor
6 Bob Deisher, M.D., in 1981 to address health disparities among LGBT youth and young
7 adults. In 2019 Lambert House expanded from one to nine service locations in King County,
8 Washington and served over 1,300 youth.

9 7. As Executive Director, my role is to oversee the operations and
10 implementation of our mission at Lambert House. At the core of Lambert House’s work are
11 the youth groups we facilitate. Our youth group programs provide a safe space for LGBTQ
12 youth to build community and access support.

13 8. I am familiar with the Final Rule which was published in the Federal Register
14 on June 19, 2020 and is set to take effect in August, and I am concerned about its impact on
15 Washington’s LGBTQ communities.

16 9. The protections from healthcare discrimination against LGBTQ people that
17 were included in Section 1557 of the Affordable Care Act (“ACA”) were designed to protect
18 the LGBTQ communities from discrimination. At the time they were enacted they were
19 critical because, despite advances in public acceptance of LGBTQ people, we still often
20 experience discrimination when seeking health insurance and health care.

21 10. To illustrate how harmful discrimination in the healthcare setting can be, a self-
22 identified trans-masculine participant in one of Lambert House’s youth groups agreed to share
23 their experience. As I understand it, trans-masculine identities are those of people who were
24 assigned female at birth, but who do not identify as female.¹ R.S. shared the following
25

1 experience:

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3 “A few months before my top surgery, I discovered a lump in one
4 of my breasts. I have a family history of breast cancer so this was a
5 significant concern. I sought medical attention immediately.
6 Despite the sensitivity and urgency of the situation, I had to go to
7 two different hospitals before I received the care I needed.

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9 The treatment I received at the first hospital was hostile and
10 inappropriate. The doctor did not follow proper protocol for a breast
11 exam and did not offer any advice regarding next steps, despite the
12 obvious lump. When I asked about next steps, he said he did not
13 know “because I was trans.”

14 I had to go to a second hospital where I received the appropriate
15 care and diagnosis. The doctor I saw at the second hospital gave me
16 a thorough examination and confirmed that the care I received at the
17 prior hospital was inadequate and did not follow appropriate
18 protocols. I was referred for a biopsy the very next day.”

19 11. If the Final Rule takes effect we can expect the barriers to appropriate and
20 lifesaving healthcare for Washington’s LGBTQ communities to increase and experiences like
21 R.S.’s to continue and happen more frequently. Revoking the civil rights protections of
22 LGBTQ people is an act of animus and disrespect against LGBTQ people that imposes on all of
23 us the erroneous belief that non-LGBTQ (in other words, straight and cis-gender) people are
24 intrinsically better and more worthy of health insurance and appropriate lifesaving health care
25 than are gay or transgender people. That belief is antithetical to the fundamental purpose of a
26 healthcare system.

27 I declare under penalty of perjury under the laws of the United States and the State of
28 Washington that the foregoing is true and accurate.

29 ¹ The 2016 Rule defined “gender identity” as “an individual’s internal sense of gender, which may be
30 male, female, neither, or a combination of male and female, and which may be different from an
31 individual’s sex assigned at birth.” 81 Fed. Reg. at 31,467 (formerly codified at 45 C.F.R. § 92.4)

1 DATED this 16th day of July, 2020, in Seattle, Washington
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Kenneth Shulman
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